

REMARKS

In response to the Office Action mailed November 18, 2004, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. Applicant prays that, after consideration of these remarks, a favorable decision will be provided regarding the claims. The claims as now presented are believed to be in allowable condition.

Claims 1-30 were pending in this Application. By this Amendment, claims 1-7 and 13 have been amended. Claims 1, 3, 5-7, 9, 11-13, 21 and 29-30 are independent claims.

Rejections under §112

The Examiner rejected claims 1-7 and 11-30 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-7 and 13 have been amended to distinctly claim the subject matter of the present invention. Claims 21 and 29-30 were not amended as they are believed to distinctly claim the subject matter of the present application. The Examiner asserted that the use of the terms "selecting" and "choosing" are indefinite because it is not clear whether the client is performing this function or some other device. Claim 21 recites in part a "data communication device" comprising a processor which is configured to choose one of the plurality of resources. Since the processor is part of the data communications device, it is the data communications device which performs the choosing. Claim 29 recites a data communications device comprising "means for choosing"., Claim 30 recites a computer program product which causes the data communications device to perform the step of "choosing" one of the plurality of resources. Applicant submits that claims 21 and 29-30 are not indefinite. Accordingly, the rejection of claims 1-7 and 11-30 under 35 U.S.C. §112, second paragraph, is believed to have been overcome.

Rejections under §103

The Examiner rejected claims 1, 3, 5-6, 13, 15, 18-21, 23 and 26-30 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2002/0120565 to Yu et al. (herein after Yu). The Examiner also rejected claims 2, 4, 14, 16-17, 22 and 24-25 under 35 U.S.C. §103(a) as being unpatentable over Yu in view of U.S. Patent No. 5,684,994 to Tanaka et al. (hereinafter Tanaka). The Examiner further rejected claims 7-12 under 35 U.S.C. §103(a) as being unpatentable over Tanaka in view of Yu.

Enclosed herewith is an affidavit of James W. O'Toole, Jr., inventor of the present application. The enclosed affidavit under 37 C.F.R. §1.131 constitute an uncontroverted unequivocal statement as to the correctness of the inventorship and that the invention was conceived prior to the priority date of the Yu reference (February 28, 2001). Applicants respectfully submit that the Yu reference applied by the Examiner does not qualify as prior art since the affidavit shows that the present invention was conceived and reduced to practice prior to the priority date of the Yu reference. As such, the present invention cannot be anticipated by the Yu reference. Accordingly, the rejection of claims 1-30 as being unpatentable over Yu, Yu in view of Tanaka, and Tanaka in view of Yu is believed to have been overcome.

Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

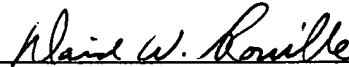
Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this

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response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



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